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Order Instituting Rulemaking on the Commission's Own Motion into the programs, practices and policies related to implementation of the California Environmental Quality Act as it applies to jurisdictional telecommunications utilities.

Rulemaking 00-02-003

**REPLY COMMENTS OF THE
DIVISION OF RATEPAYER ADVOCATES ON THE DRAFT DECISION
MODIFYING THE COMMISSION'S APPLICATION OF CEQA TO
TELECOMMUNICATIONS UTILITIES**

In accordance with Rule 77.6(c) of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the Division of Ratepayer Advocates submit Reply Comments on the Draft Decision Modifying the Commission's Application of CEQA to Telecommunications Utilities. Silence on a particular issue should not be construed as agreement with the positions of any party. As noted in the attached Motion to Late File, DRA requests that these Reply Comments be accepted although filed one day late.

I. INTRODUCTION

Despite the Commission's efforts to establish a more uniform construction permitting process, most parties assert that the proposed ETP is unduly burdensome, unnecessary, and fails to comply with CEQA regulations. There is some question among parties as to whether the ETP is necessary or lawful given the common view that it is "not a discretionary activity separate and distinct from CEQA."¹ Moreover, some parties

¹ Comments of the California Cable and Telecommunications Association on the Draft Decision of Geoffrey Brown (CCTA Comments), July 10, 2006, at 1.

maintain that the ETP would only exacerbate or contribute to the disparities among telephone carriers. DRA submits that while it may be difficult if not impossible for the Commission to devise an ETP proposal that satisfies all parties, the Commission should address the perceived inefficiencies and inequities of this proposal when it convenes a workshop for the purposes of drafting a new General Order. Whatever form the ETP ultimately takes, DRA simply urges the Commission to ensure that it is as efficient and competitively neutral as possible in order to maximize benefits to ratepayers by creating a more level playing field and encouraging investment in facilities deployment.

II. DISCUSSION

DRA is sympathetic to parties' concerns about the imposition of additional review requirements, such as Level 3's observation that the ETP process "requires far more information than necessary to determine that a project does not fall within an exception to the exemptions."² However, the Commission should give little weight to the arguments of some commenters to the extent that they enjoy a regulatory advantage over other carriers and therefore have an incentive to oppose a more standardized approach to construction permitting. Thus, just as the DD acknowledges that the Commission cannot resolve "any and all"³ competitive disparities (such as the inherent advantages currently realized by incumbent telecommunications providers), the incumbents' biases must be also be recognized when evaluating their criticisms of the proposed ETP.

One common criticism is that the ETP would serve to widen the gulf in regulatory treatment between the LECs and the wireless and cable providers. The Small LECs assert that if the DD is adopted, "only wireline telephone corporations would be subject to the extensive environmental oversight of the Commission, while the entities who present the most urgent form of competition, wireless carriers and cable television

² Comments of Level 3 Communications, Inc. to Draft Decision of Assigned Commissioner (Level 3 Comments), July 10, 2006, at 4.

³ Opinion Modifying the Commission's Application of the California Environmental Quality Act to Telecommunications Utilities (DD), June 20, 2006) at 15.

operators, would be exempt from such scrutiny.”⁴ While all of the jurisdictional differences among telecommunications carriers are not amenable to resolution in this proceeding, the Commission should avoid contributing to this natural disparity or “tilt the competitive playing field” by imposing unnecessary reporting requirements.⁵ The Commission should ensure that it does not inadvertently contribute to regulatory disparities in the process of establishing a more level regulatory approach.

DRA reiterates that the most critical objective in this proceeding is to set forth an efficient construction permitting process that is applied equally and consistently to all telecommunications carriers regardless of vintage of CPCN. Some parties assert that the record in this proceeding “reflects no real consideration of alternative approaches and lacks sufficient information for the Commission to consider the legal, practical, and technical implications of the proposal itself.”⁶ We believe this concern is overstated, however, we do not disagree that the Commission could benefit from additional evaluation of alternative methods and proposals for exclusions of projects from the ETP in order to minimize reporting burdens wherever possible. Nevertheless, DRA believes that an ETP that is as efficient as possible while establishing more equality in regulatory treatment should be adopted by this Commission.

III. CONCLUSION

DRA does not at this time offer any alternative recommendations to improve on the proposed ETP. However, DRA agrees with those commenters who suggest that the proposed construction permitting process could benefit from additional evaluation and

⁴ Comments of Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthil Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) on Draft Decision Issued June 20, 2006 (Comments of the "Small LECs"), July 10, 2006 at 5.

⁵ DD at 3.

⁶ Comments of AT&T California on the Proposed Decision of Commissioner Brown Issued June 20, 2006 (AT&T Comments), July 10, 2006, at 4.

discussion of how best to reach these objectives in the proposed workshop on the development of the new General Order. The Commission should incorporate some of the concerns about efficiency discussed above when setting the agenda for the proposed workshop. DRA agrees with Level 3 that the ETP should not be implemented prior to the conclusion of the workshop.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
**“REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON
THE DRAFT DECISION MODIFYING THE COMMISSION’S APPLICATION
OF CEQA TO TELECOMMUNICATIONS UTILITIES ”** in **R.00-02-003** by using
the following service:.

☒ **E-Mail Service:** sending the entire document as an attachment to all known
parties of record who provided electronic mail addresses.

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known parties of record who did not provide electronic mail addresses.

Executed in San Francisco, California, on the **18th** day of **July, 2006**.

/s/ ALBERT HILL

ALBERT HILL

N O T I C E

Parties should notify the Process Office, Public Utilities
Commission, 505 Van Ness Avenue, Room 2000, San Francisco,
CA 94102, of any change of address and/or e-mail address to
insure that they continue to receive documents. You must indicate
the proceeding number on the service list on which your name
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